IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

vs.

BARBARA L. WOLF,

Respondent.
_____/

Supreme Court No. 76,797

The Florida Bar No. 89-52,623 (17)

ON REVIEW FROM THE REPORT OF A REFEREE

REPLY BRIEF OF RESPONDENT

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TABLE OF CONTENTS

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FURTHER STATEMENT OF FACTS

The **bar,** in its brief, **seeks** to dislodge the Referee's *findings* of fact, and urge the same harsh views which did not sell in the hearing **below;** that Respondent at all times acted with great malevolence and specific intent in each of her admitted transgressions. **However,** the bar further upbraids Respondent for her concededly **egregious** bookkeeping and abject **lack** of awareness of the state of the various accounts for which she was responsible. It is respectfully **pointed** out **that** these two inconsistent grounds of condemnation were also **urged** upon the **Referee,** who heard the evidence firsthand, and decided that sufficient mitigating factors had been shown to warrant: leniency.

The bar seeks to buttress this approach by honing to needle-sharpness individual financial transactions and then slant-

drilling. While Respondent does not believe - in view of her stipulations on the issues of fact showing fault - that a point-by-point commentary on the bar's Statement of Facts is a proper use of this Court's time, in view of the overall posture of the case, a small example deserves highlighting. In the *Estate* of Holbrook *problem,* the evidence was that when Respondent represented to the Probate Court that the accounting was in order, she either had just been to or was on her way to the bank with a deposit to ensure that this accounting was accurate. (Tr. Page 231.) Such conduct - even though wrongful - seems a far cry from the naked charge of *stealing* so loudly brandished by the bar.

Of greater consequence, we think, is the bar's attempt to mask its responsibility for the inordinate delay in prosecution of these claims, which was indeed the principal point in Respondent's initial brief. On Page *24* of its brief the bar asserts: "It was *only during his* summation that appellant's counsel devoted virtually his entire remarks to allegations of laches on the bar's part, characterizing the delay as unaccounted for and unconscionable." This suggestion that astute bar counsel was somehow "blindsided" flies in the face of what was always known by both sides to be a significant issue - delay beyond reason!

When, during the pre-trial skirmishing which yielded the stipulation that saved many days of trial, bar counsel suggested Respondent admit that delay could not be a defense, undersigned counsel specifically rewrote the tendered language to carve out

Respondent's main defense: that delay could be used to argue mitigation, as has been done.

When Carlos Ruga was on the stand during cross-examination, he was skewered for waiting so long to finish his investigation, as the transcript shows. Bar counsel had every right then and there to put on more evidence, and *chose* not to do so.

It was only when the bar confronted Respondent's view of the impact of the delay, and anticipated that the Referee's report might be disappointing, that the rush to put in the many exhibits which comprise pages 1-53 of its Appendix I erupted. After examining these proffered documents, the Referee quite properly rejected the bar's effort to reopen the case. Among others, there are two obvious reasons for his ruling:

First, the Referee specifically declined to give Respondent points in mitigation because of the delay, opining that no prejudice had been shown; and,

Second, the delay in question as contemplated by the endless exchange of letters is not relevant to the delay complained of by Respondent.

Virtually all of the correspondence which the bar offers in its effort to salvage what it *now* views as a serious issue - untoward delay in prosecution, which is an anathema to due process wherever it is encountered - has proffered a plethora of letters exchanged between several bar counsel, the bar's examining accountant Ruga, Ms. Wolf, and two lawyers representing her. It is quite clear from the content of these letters that the bar

was interested in the disposition of potential claims arising from the failed land trusts which Respondent supervised, and was content to await the resolution of these cases before taking its next step. It is also clear that Respondent asked for and got delay *for the purpose of resolving these specific suspected* offenses. There is almost nothing in the correspondence which relates to the gravamen of the misconduct here at issue, and nothing at all to indicate that there should be any "hanging back" as to potential charges - levelled specifically in 1986 - *other* than those related to the land trusts.

Indeed - and without waiving her right to confront and explain the circumstances surrounding these letters should this Court rule that the Referee abused his discretion in refusing to reopen the case - Respondent respectfully urges this Court to consider the suggestion that these exhibits actually support Respondent's plea that she is the innocent victim of an unreasonably delayed prosecution. For despite the language of her settlement agreement of February, 1986, accusing her of two counts of misconduct which she denied, it is apparent that the *only* lingering interest the bar expressed in 1986, 1987, 1988 and most of 1989 was in Ms. Wolf's right to continue practicing because of the land trust controversy. Had the bar been alarmed with the facts surrounding ***Holbrook, Nassr/Klingerman, Claypool, Speck and Nemetz,*** it should have pursued them forthwith. We do not believe that the "laches waivers" which the bar sought and got from Respondent relate to these offenses. We think it only

because the settlement of the claims against respondent's insurance carrier were grounded on a technicality rendering the claims indefensible - and thus a weak basis for further prosecution of Respondent - that the bar resurrected those cases upon which it now declaims.

CONCLUSION

We stand by the position taken in our initial brief. Ms. Wolf has been guilty of wrongful conduct, and has been punished for it. There is no evidence that she has not been rehabilitated, or that she is presently an ongoing threat to the public or the profession. If there is continuing concern that her ability to handle money is still questionable - despite the fact that there have been no defalcations for seven years - supervision by a CPA has proven effective in the past.

We recognize the fact that a lawyer's personal problems do not excuse the appropriation of another's funds to her own use. But this was no embezzlement; it was a case of inattention, ineptitude, panic, and the cross-mixing of accounts helter-skelter during a period when Respondent confronted two personal calamities which all but overwhelmed her:

First, the land trust management effort, which was probably beyond Respondent's ken at the outset, but which fell into ruin in the mid-eighties along with thousands of Florida real estate investment projects, and;

Second, her husband's severe drug problem, which distracted her and kept her in a state of heightened anxiety, impinging upon her judgment and ability to function.

We believe that these aberrations were far different than those examples of misappropriation of client funds where the lawyer in question was aware of his actions, and decided consciously to proceed merely because he *needed the money.* Respondent, unlike the actors in those cases, had a blurred awareness that something was wrong when she received overdraft notices, and sought to remedy the situation by putting *her* money where she though it was due. Her management of this crisis leaves very much to be desired, but it also casts doubt on whether she was at any time governed by *mens rea.*

We humbly propose that Respondent, all factors considered, is deserving of the leniency for which we ask.

Respectfully submitted,

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By: F. Lee Bailey
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail to Honorable Otis Farrington, Referee, 625 N.E. 11th Avenue, Fort Lauderdale, Florida *33304* and David M. Barnovitz, Bar Counsel, The Florida Bar, 5900 North Andrews Avenue, Suite 835, Fort Lauderdale, Florida 33309 this 1st day of July, 1992.

F. Lee Bailey
Florida Bar No. 0820520

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